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## State of Minnesota
# HOUSE OF REPRESENTATIVES

**NINETY-SECOND SESSION**

**H. R. No.** **5**

1.1                      A House resolution

1.2      providing for the impeachment of Steve Simon, Secretary of State of the State of
1.3      Minnesota, for violating the United States Constitution, Minnesota Constitution, and
1.4      Minnesota election law.

1.5      WHEREAS, article VIII, section 1, of the Minnesota Constitution provides the House of

1.6      Representatives the power of impeachment, and provides the Senate the power to try impeachments;

1.7      and

1.8      WHEREAS, Secretary of State Steve Simon colluded with Democratic National Committee

1.9      attorney Marc Elias and the Democracy Docket in the negotiation and acceptance of the consent

1.10      decrees which changed election rules for the primary and general elections in 2020, thereby violating

1.11      the authority of the Minnesota Legislature; and

1.12      WHEREAS, Secretary of State Steve Simon agreed to the consent decrees without the

1.13      authority to do so, thereby violating the electors clause in the United States Constitution, article II,

1.14      section 1, clause 2, by extending the date of the November 3, 2020, election, and the election clause

1.15      in the United States Constitution, article I, section 4, by waiving both the statutorily mandated rules

1.16      governing absentee ballot witness signatures and postmarks; and

1.17      WHEREAS, Secretary of State Steve Simon agreed to the consent decrees, thereby violating

1.18      the equal protection rights of eligible voters under the Minnesota Bill of Rights, article I, section

1.19      2, which states, "No member of this state shall be disfranchised or deprived of any of the rights or

1.20      privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers,"

1.21      and thus the right of every eligible voter to have their vote counted, without dilution, according to

1.22      the rules established by Congress and the Minnesota State Legislature; and

1.23      WHEREAS, Secretary of State Steve Simon issued written guidance to election officials on

1.24      the appointment and duties of absentee ballot boards which are inconsistent with state law requiring

2.1    that election judges serving in election day precincts or on absentee ballot boards meet a political

2.2    party balance rule to ensure fair and free elections; and

2.3    WHEREAS, Secretary of State Steve Simon willfully colluded, as described above, to violate

2.4    the authority of the state legislature and the rights of eligible voters, and further willfully issued

2.5    official guidance to election officials in direct contradiction to state statutes, thereby violating the

2.6    oath of office he took to uphold the Minnesota Constitution, Minnesota election statutes, and the

2.7    United States Constitution; NOW, THEREFORE,

2.8    BE IT RESOLVED by the House of Representatives of the State of Minnesota that Steve

2.9    Simon, Secretary of State of the State of Minnesota, is impeached for violating the United States

2.10    Constitution, Minnesota Constitution, and Minnesota election law.

2.11    BE IT FURTHER RESOLVED that the following articles of impeachment are adopted by

2.12    the House of Representatives and must be exhibited to the Senate.

2.13    BE IT FURTHER RESOLVED that, in accordance with article VIII, section 3, of the

2.14    Minnesota Constitution, Secretary of State Steve Simon must not exercise the duties of secretary

2.15    of state from the time this resolution is adopted and may resume the duties of secretary of state

2.16    only if acquitted by the Senate of the State of Minnesota.

2.17    BE IT FURTHER RESOLVED that, in accordance with article VIII, section 4, of the

2.18    Minnesota Constitution, the Speaker of the House of Representatives must ensure that Secretary

2.19    of State Steve Simon is served with papers giving notice of the articles of impeachment as

2.20    expeditiously as possible.

2.21    BE IT FURTHER RESOLVED that the Chief Clerk of the House of Representatives is

2.22    directed to prepare an enrolled copy of this resolution, to be authenticated by his signature and that

2.23    of the Speaker, and transmit it to the Governor of Minnesota, the Secretary of State of Minnesota,

2.24    the President of the Senate, and the Secretary of the Senate.

2.25    The following articles of impeachment are exhibited by the House of Representatives of the

2.26    State of Minnesota against Steve Simon, Secretary of State of the State of Minnesota, in maintenance

2.27    and support of impeachment for violating the plain language of the United States Constitution and

2.28    Minnesota election law.

2.29    **ARTICLE 1**

2.30    Article II of the United States Constitution grants state legislatures the authority to select

2.31    presidential electors and Congress the authority to select the date of the election. The "electors

2.32    clause" states that each "State shall appoint, in such Manner as the Legislature thereof may direct,

2.33    a Number of Electors." The Constitution gives the United States Congress the power to set the date

2.34    on which the presidential election occurs, but it requires the "day shall be the same throughout the

2.35    United States." Congress has set "the Tuesday next after the first Monday in November" as the date

3.1 for selecting presidential electors under United States Code, title 3, section 1. In 2020, that day fell

3.2 on November 3, 2020, which was Election Day.

3.3 By its plain terms, the electors clause vests the power to determine the manner of selecting

3.4 electors exclusively in the "Legislature" of each state, as established in the United States Constitution,

3.5 article II, section 1, clause 2. In McPherson v. Blacker, 146 U.S. 1, 27 (1892), the United States

3.6 Supreme Court made clear that the constitution "leaves it to the legislature exclusively." This vested

3.7 authority is not just the typical legislative power exercised pursuant to a state constitution. Rather,

3.8 when a state legislature enacts statutes governing presidential elections, it operates "by virtue of a

3.9 direct grant of authority" under the United States Constitution. Bush v. Palm Beach County

3.10 Canvassing Board, 531 U.S. 70, 76 (2000).

3.11 The United States Constitution, article I, section 4, known as the elections clause, provides

3.12 that "[t]he times, places and manner of holding elections for Senators and Representatives, shall

3.13 be prescribed in each state by the legislature thereof; but the Congress may at any time by law make

3.14 or alter such regulations ..."

3.15 A legislature's power in this area is such that it "cannot be taken from them or modified"

3.16 even through "their state constitutions." McPherson, 146 U.S. at 35; see also Palm Beach, 531 U.S

3.17 at 76-77.

3.18 Under Minnesota Statutes, section 203B.02, subdivision 1, any "eligible voter may vote by

3.19 absentee ballot." For the 2020 general election, voters were able to cast absentee ballots beginning

3.20 September 18. Minnesota Statutes, section 203B.081, subdivision 1, provides an "eligible voter

3.21 may vote by absentee ballot...during the 46 days before the election." A voter may request an

3.22 absentee ballot any time up until the day before Election Day.

3.23 Minnesota Statutes, section 203B.08, subdivision 3, provides receipt deadlines for absentee

3.24 ballots depending on the delivery method. For a vote to count, election officials must receive

3.25 absentee ballots delivered by hand by 3:00 p.m., and those delivered by mail by 8:00 p.m. Ballots

3.26 received after those times must be marked as received late by the county auditor or municipal clerk,

3.27 and must not be delivered to the ballot board. To facilitate compliance with this legislative mandate,

3.28 Minnesota Rules, part 8210.2500, directs that absentee ballots arriving after the deadline "shall be

3.29 marked as received late by the county auditor or municipal court."

3.30 The rule of law, as established by the United States Constitution and the Minnesota Legislature,

3.31 dictates these rules must be followed regardless of the Secretary of State Steve Simon's instructions

3.32 to the contrary. There is no pandemic exception to the Constitution. See, for example, Democratic

3.33 National Committee v. Wisconsin State Legislature, No. 20A66, 2020 WL 6275871, at 4 (Oct. 26,

3.34 2020), in which Justice Kavanaugh, in a concurrence denying application for stay, stated "the design

3.35 of electoral procedures is a legislative task, including during a pandemic."

3.36 In April 2020, Secretary of State Steve Simon approached the legislature to propose changes

3.37 to voting processes and law in response to COVID-19. When making those legislative proposals,

4.1 Secretary of State Steve Simon stated that no one, including the Secretary of State, has the unilateral

4.2 authority to make changes to electoral processes or law to deal with COVID-19 and the anticipated

4.3 increase in absentee ballots. The proposals brought to the legislature included a shift to universal

4.4 vote by mail; the closing, consolidation, and relocation of precincts; deputizing nursing home

4.5 employees to assist residents with voting; more time to process absentee ballots; and various other

4.6 accommodations.

4.7 In May 2020 the legislature passed and enacted some of the requests from Secretary of State

4.8 Steve Simon regarding 2020 election changes in Laws of Minnesota 2020, chapter 77, but after

4.9 careful deliberation chose not to pass the full set of recommendations made. Instead of respecting

4.10 the legislature's decision, as enacted into law, Secretary of State Steve Simon instead achieved the

4.11 changes he did not obtain via the legislative process through the court system and consent decrees.

4.12 In May 2020, the Alliance for Retired Americans Education Fund and other plaintiffs sued

4.13 Secretary of State Steve Simon to enjoin enforcement of the receipt deadline. LaRose v. Simon,

4.14 No. 62-CV-20-3149 (Minnesota District Court 2020). Secretary of State Steve Simon and Minnesota

4.15 Alliance for Retired Americans Education Fund then filed a partial consent decree for the primary

4.16 election and asked the state court to approve it.

4.17 In mid-June 2020, the Minnesota state court entered the partial consent decree order. Under

4.18 the primary election consent decree, Secretary of State Steve Simon agreed to not enforce the

4.19 statutory mandated ballot receipt deadline. Instead, election officials would accept all absentee

4.20 ballots received up to two days after the primary so long as they were postmarked on or before the

4.21 date of the primary. Secretary of State Steve Simon also agreed to issue instructions to election

4.22 officials about the change. These included enclosing information with each absentee ballot telling

4.23 voters that their ballots could arrive up to two days after the date of the primary, as well as taking

4.24 additional steps to inform the public.

4.25 In mid-July 2020, Secretary of State Steve Simon and the Alliance for Retired Americans

4.26 Education Fund filed a consent decree for the general election and asked the state court to approve

4.27 it. The state court entered the consent decree order on August 3, 2020. Under the general election

4.28 consent decree, Secretary of State Steve Simon agreed to not enforce the ballot receipt deadline in

4.29 Minnesota Statutes, section 203B.08, subdivision 3. Instead, Secretary of State Steve Simon agreed

4.30 he would issue guidance to local election officials to count all mail-in ballots with a postmark of

4.31 Election Day or before, if those election officials received the ballots within five business days or

4.32 seven calendar days of Election Day, also known as the postmark deadline. The consent decree

4.33 also provided that if a mail-in ballot did not have a postmark, the election official "should presume

4.34 that it was mailed on or before Election Day unless the preponderance of the evidence demonstrates

4.35 it was mailed after the Election Day."

4.36 Judge Sara Grewing, Assistant Chief Judge of the Second Judicial District of Minnesota,

4.37 approved the LaRose v. Simon consent decree. Empowered by the consent decree, Secretary of

5.1 State Steve Simon directed election officials, also in violation of the legislature's authority, to not

5.2 enforce state law governing the witness and postmark requirements and to count absentee ballots

5.3 received up to a week after election day.

5.4 Subsequently, in James Carson, et. al. v. Simon, et. al., the United States Court of Appeals

5.5 for the Eighth Circuit held that Congress's determination of the timing for elections under article

5.6 I, section 4, is binding on the states, and in doing so rejected Secretary of State Steve Simon's

5.7 modification of Minnesota's statutorily imposed ballot-receipt deadline.

5.8 Only the Minnesota Legislature, and not the Secretary of State, has plenary authority to

5.9 establish the manner of conducting a presidential election in Minnesota. It is not the province of

5.10 the secretary of state to rewrite the state's election code, nor does state law authorize the secretary

5.11 of state to override the legislature's ballot deadlines due to public health concerns. Secretary of

5.12 State Steve Simon's actions altering the Minnesota election law governing the deadline for mail-in

5.13 ballots in the 2020 Minnesota presidential election violated the electors clause of the United States

5.14 Constitution, article II, section 1. The Secretary of State's instructions to count mail-in ballots

5.15 received up to seven days after Election Day stand in direct contradiction to Minnesota election

5.16 law governing presidential elections. Secretary of State Steve Simon violated the plain language

5.17 of the United States Constitution and Minnesota election law passed by the Minnesota Legislature.

5.18 Wherefore, by virtue of the conduct described in this article, Secretary of State Steve Simon

5.19 warrants impeachment, trial, and removal from office.

5.20 **ARTICLE 2**

5.21 Minnesota Statutes, section 203B.121, subdivision 1, provides that "[t]he governing body of

5.22 each county, municipality, and school district with responsibility to accept and reject absentee

5.23 ballots must, by ordinance or resolution, establish a ballot board. The board must consist of a

5.24 sufficient number of election judges trained in the handling of absentee ballots and appointed as

5.25 provided in sections 204B.19 to 204B.22. The board may include deputy county auditors or deputy

5.26 city clerks who have received training in the processing and counting of absentee ballots." Minnesota

5.27 Statutes, section 203B.121, subdivision 2, further states that "[e]lection judges performing the duties

5.28 in this section must be of different major political parties, unless they are exempt from that

5.29 requirement under section 205.075, subdivision 4, or section 205A.10, subdivision 2."

5.30 In 2016, Secretary of State Steve Simon adopted an administrative rule, Minnesota Rules,

5.31 part 8210.2450, subpart 1, that contradicts and violates Minnesota Statutes, section 203B.121,

5.32 subdivisions 1 and 2. The adopted rule states, in part, "[t]wo or more ballot board members from

5.33 different major political parties must review the absentee ballots returned for the precinct under

5.34 Minnesota Statutes, section 203B.121, unless they are deputy county auditors or deputy city clerks

5.35 who have received training in the processing and counting of absentee ballots, or are exempt from

5.36 that requirement under Minnesota Statutes, section 205.075, subdivision 4, or Minnesota Statutes,

5.37 section 205A.10, subdivision 2. ..." This adopted administrative rule contradicts the plain language

6.1 of the statutes governing elections in Minnesota by allowing the governing body to exclude citizen

6.2 election judges by appointing deputies instead.

6.3 The legislature added a party balance requirement for ballot boards to ensure that the election

6.4 judges accepting and rejecting of ballots would act honestly and with integrity when administering

6.5 the election. The law, recognizing the need for assistance from deputy county auditors or deputy

6.6 city clerks for these citizen boards, also allowed for limited involvement as needed. However, the

6.7 law did not intend to completely exclude citizen election judges, whose involvement is a longstanding

6.8 tradition in Minnesota elections. Instead of following Minnesota election law, Secretary of State

6.9 Steve Simon adopted an administrative rule and issued guidance that is inconsistent with Minnesota

6.10 Statutes, section 203B.121. The guidance exempted certain local government employees from the

6.11 party balance requirements established in statute and that normally apply to election judges. As a

6.12 result of Secretary of State Steve Simon's efforts, for the general election in 2020 only two of

6.13 Minnesota's 87 counties, Ramsey and Olmsted, complied with the law by comprising the ballot

6.14 boards of citizen election judges engaged in the substantive work of accepting and rejecting ballots.

6.15 Secretary of State Steve Simon accomplished what he could not win legislatively, including

6.16 during his service in the House of Representatives, by adopting rules applicable to election officials

6.17 at the city and county level that effectively rewrite statutory law, allowing election officials to

6.18 appoint their own deputies, exclude citizen election judges entirely from absentee ballot boards, or

6.19 exclude citizen election judges from the important, substantive work of accepting and rejecting the

6.20 absentee ballots. Rather than using his executive authority to enforce the law duly passed by the

6.21 legislature, Secretary of State Steve Simon misused his executive authority to rewrite the law to

6.22 achieve the result he prefers.

6.23 Wherefore, by virtue of the conduct described in this article, Secretary of State Steve Simon

6.24 warrants impeachment, trial, and removal from office.